

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

TONY M. HOWARD

PLAINTIFF

v.

CAUSE NO. 1:19-cv-543-LG-RPM

**MISSISSIPPI DEPARTMENT OF
CORRECTIONS, et al.**

DEFENDANTS

**ORDER DISMISSING REMAINING PARTIES
WITHOUT PREJUDICE FOR LACK OF SERVICE OF PROCESS**

THIS MATTER IS BEFORE THE COURT *sua sponte* for the purpose of dismissing the remaining defendants, Nurse Green and John Does 1-5. The Court previously ordered Plaintiff to show cause why this lawsuit should not be dismissed for failure to identify and serve process on these defendants and extended the time to render service. Having failed to do so, Plaintiff's claims against these Defendants must be dismissed without prejudice.

Plaintiff is an inmate in the custody of MDOC and housed at the Central Mississippi Correctional Facility ("CMCF") in Rankin County, Mississippi. The Complaint describes an August 3, 2018, incident in which an inmate at SMCI, where Plaintiff was formerly housed, intentionally set him on fire using gasoline, a chemical mixture, and a cigarette lighter. According to the Complaint, Plaintiff immediately requested medical assistance for his burns and was taken to SMCI's medical facility. Plaintiff maintains that Nurse Green refused to administer medications timely and instructed him to inject himself with medication. Defendants and other staff also verbally assaulted Howard. After his transfer to

another hospital, Plaintiff's injuries were evaluated, and then he was taken to the Mississippi State Penitentiary Unit 29.

Plaintiff's Amended Complaint filed February 13, 2020, asserts claims against several defendants, including Nurse Green and unidentified John Doe parties. (*See* Am. Compl., ¶¶ 35-37, ECF No. 22). Over a year later, on February 23, 2021, the Court ordered Plaintiff to show cause "why this lawsuit should not be dismissed without prejudice for failure to timely serve process on the remaining defendants," who all remain unidentified. (Order to Show Cause, ECF No. 71). In his [72] Response, Plaintiff admitted that he "has been unable to sufficiently identify the real identity of Nurse 'Jane' Green and to effectuate service upon her." (Resp. Show Cause Order, ¶ 2, ECF No. 72).

On March 24, 2021, the Court ordered Plaintiff to make service on these defendants within 30 days. (*See* Order Requiring Serv. Remaining Defs., 1-3, ECF No. 73) (citing *Easterling v. U.S. Bank Nat'l Assoc.*, No. 3:18CV2528-C-BH, 2019 WL 6218771, at *6 (N.D. Tex. Nov. 5, 2019) ("The Federal Rules of Civil Procedure 'do not authorize a plaintiff to maintain suit indefinitely against a fictitious defendant,' such as a 'John Doe,' however. Plaintiffs . . . have a 'duty to provide information sufficient to identify the defendants.'") (citations and interpolations omitted)). The Court warned that "FAILURE TO SERVE PROCESS MAY RESULT IN DISMISSAL OF THIS ACTION." (Order, ECF No. 73) (emphasis omitted). As a result, Plaintiff was required to make service by Friday, April 23, 2021.

But although Plaintiff's allegations against Nurse Green and the John Doe defendants remain pending, the Court can again find no indication in the record that these parties were identified and served in compliance with the Court's [73] Order Requiring Service of Process on the Remaining Defendants.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The Court, having granted Plaintiff an opportunity to show cause and an appropriate extension of time to make service, must now dismiss these defendants without prejudice for lack of service of process.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Plaintiff's claims against Defendants Nurse Green and John Does 1-5 are **DISMISSED WITHOUT PREJUDICE** for failure to serve process.

SO ORDERED AND ADJUDGED this the 17th day of August, 2021.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE